



Federal Communications Commission
Washington, D.C. 20554

DA 03-165
January 17, 2003

William J. Sill, Esq.
Wilkinson Barker Knauer, LLP
2300 N Street, NW
Suite 700
Washington, DC 20037

Re: Petitions for Temporary Waiver and Extension of Time by Cellular Phone of Kentucky, Inc., and Litchfield County Cellular, Inc.

Dear Mr. Sill:

This letter responds to two Petitions for Temporary Waiver and Extension of Time (Petitions) that you filed on November 22, 2002, on behalf of your clients Cellular Phone of Kentucky, Inc. (CPK), and Litchfield County Cellular, Inc. (Litchfield), respectively (collectively, Petitioners).¹ Each of the Petitioners requests a two-month extension of the November 24, 2002 deadline established in the Commission's rules for all Commercial Mobile Wireless Service (CMRS) providers to support roaming for customers with ported or pooled numbers.² For the reasons set forth below, we grant the Petitions, and extend the deadline for Petitioners to support roaming to January 24, 2003.

Under Commission rules and orders, covered CMRS providers that operate within the 100 largest Metropolitan Statistical Areas (MSAs) are required to offer local number portability (LNP) by November 24, 2003, and must participate in pooling by November 24, 2002.³ In addition, all covered CMRS providers must support nationwide roaming by CMRS customers with ported or pooled numbers by November 24, 2002.⁴ Thus, although CMRS providers outside the largest 100 MSAs are not required to support either portability or pooling in their home markets by November 24, 2002, they are required to support roaming by customers with ported or pooled phones as of that date.⁵ This requirement was intended to ensure that if a

¹ Cellular Phone of Kentucky, Inc., Petition for Limited Waiver and Extension of Time, CC Docket 99-2000, filed November 22, 2002 (CPK Petition); Litchfield County Cellular, Inc. Petition for Limited Waiver and Extension of Time, CC Docket 99-2000, filed November 22, 2002 (Litchfield Petition).

² CPK Petition at 4; Litchfield Petition at 4.

³ See *Verizon Wireless Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation*, WT Docket No. 01-184, and *Telephone Number Portability*, CC Docket No. 95-116, Memorandum Opinion and Order, 17 FCC Rcd 14972, 14985, 14986, para. 31 (2002) (*Verizon Wireless LNP Forbearance Order*); *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 99-200, 17 FCC Rcd 252, 261-62, paras. 19, 20 (2001).

⁴ 47 C.F.R. § 52.31(a); see also *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14986, para. 31.

⁵ *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14973, n. 11; 47 C.F.R. § 52.31(a)(2).

customer with a ported or pooled number roams into another CMRS carrier's network, that CMRS carrier will support that customer's ability to make and receive calls.⁶

Petitioners state that they are small, rural CMRS providers offering cellular phone service in sparsely populated areas of Kentucky outside of the 100 largest MSAs.⁷ Specifically, CPK serves three such counties, while Litchfield serves six counties. Thus, they are not required to support either pooling or portability by November 24, 2002, but are subject to the November 24, 2002 deadline for support of roaming.

Petitioners state that although they have worked diligently to support roaming by users with pooled or ported numbers through their respective networks, they will not be able to complete the switch upgrades required for such support by the November 24, 2002 deadline.⁸ They maintain, however, that due to their efforts to date, only two additional months will be necessary to complete and test such upgrades and begin provision of roaming support.⁹ Therefore, they request a two-month extension of the deadline to January 24, 2003.¹⁰

Petitioners argue that there are unusual circumstances justifying a limited waiver of the deadline for support of roaming.¹¹ They assert that implementation of support for roaming support requires costly upgrades to their switches in order to make them capable of recognizing the separation of the Mobile Identification Number (MIN) and the Mobile Directory Number (MDN).¹² They argue that small rural carriers are uniquely affected by the costs of compliance with the Commission's roaming obligations because of the limited monetary and non-monetary resources that are available to these carriers.¹³ They assert that their limited resources are being particularly strained at the moment because of the need to achieve compliance with a number of other pending regulatory mandates.¹⁴

The Commission's rules provide that the Commission may suspend or waive its rules, in whole or in part, for "good cause shown."¹⁵ In addition, the Commission may waive specific requirements of a rule where, in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or if the applicant has no reasonable alternative.¹⁶ The courts have found that waiver is appropriate "if

⁶ *Verizon Wireless LNP Forbearance Order*, 17 FCC Rcd at 14973, n. 11.

⁷ CPK Petition at 1-2; Litchfield Petition at 1-2.

⁸ CPK Petition at 2; Litchfield Petition at 2.

⁹ CPK Petition at 4; Litchfield Petition at 4.

¹⁰ CPK Petition at 4; Litchfield Petition at 4.

¹¹ CPK Petition at 3; Litchfield Petition at 3.

¹² CPK Petition at 3; Litchfield Petition at 2.

¹³ CPK Petition at 3; Litchfield Petition at 3.

¹⁴ CPK Petition at 3; Litchfield Petition at 3.

¹⁵ 47 C.F.R. § 1.3.

¹⁶ 47 C.F.R. § 1.925(b)(3)(ii).

special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”¹⁷

We find that the extension of time Petitioners request to meet their obligations to support roaming is warranted under their particular circumstances. The implementation of MIN/MDN separation to support roaming by customers with pooled or ported numbers requires particularly complex changes to a CMRS carrier’s network architecture.¹⁸ Given these difficult changes and the limited resources available to Petitioners, the *de minimis* nature of the requested extension gives us some assurance that the Petitioners have, as they assert, made diligent, good faith efforts to comply with their regulatory obligations. Importantly, in this case, we also find that the impact on the public from the *de minimis* delay will be insignificant. Under these circumstances, we conclude that a grant of the brief extension requested by these small, rural carriers would be consistent with the public interest. We therefore grant Petitioners’ requests for a two-month extension of the deadline for support of roaming by customers with ported or pooled numbers.

Sincerely,

James D. Schlichting
Deputy Bureau Chief
Wireless Telecommunications Bureau

¹⁷ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969)).

¹⁸ Verizon Wireless's Petition for Partial Forbearance From Commercial Mobile Radio Services Number Portability Obligation and Telephone Number Portability, WT Docket No. 01-184, CC Docket No. 95-116, Memorandum Opinion and Order, 17 FCC Rcd 14972, 14981-82, para. 24 (2002).